

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

WENDY L. MAURO,

PLAINTIFF,

VS.

CIVIL ACTION NO. 2:07CV104-P-A

CONAGRA FOODS, INC.,

DEFENDANT.

ORDER

This matter comes before the court upon Plaintiff's Motion to Remand [9]. After due consideration of the motion and the response filed thereto, the court finds as follows, to-wit:

For substantially the same reasons discussed in this court's ruling in *Holmes v. Citifinancial Mortgage Company, Inc.*, 436 F.Supp.2d 829 (N.D.Miss.2006), the court finds that the instant motion to remand is not well-taken and should be denied. Although the Complaint explicitly limits the damages sought to \$74,900.00, the defendant has met their burden in demonstrating by a preponderance of the evidence – *i.e.*, more likely than not – that the actual amount in controversy is in excess of \$75,000.00 and the plaintiff has not rebutted that showing by demonstrating that it is legally certain the plaintiff is limited to recovering less than \$75,000.00. The plaintiff herself did not file an affidavit limiting herself to less than \$75,000.00 in damages, nor did she file an affidavit preventing her from filing an amended complaint seeking more than \$75,000.00 in the event this case were remanded. It is undisputed that Mississippi law allows a plaintiff to amend her complaint after removal from federal court and to recover damages in excess of the amount contained in her complaint's *ad damnum* clause. Furthermore, the plaintiff explicitly seeks punitive damages and uses language indicating serious injuries that more often than not would result in damages in excess of \$75,000.00 in Mississippi, including her claims to have "suffered extreme physical injury, emotional

distress, [and] economic losses”

IT IS THEREFORE ORDERED AND ADJUDGED that Plaintiff’s Motion to Remand [9] is **DENIED**.

SO ORDERED this the 10th day of August, A.D., 2007.

/s/ W. Allen Pepper, Jr.

W. ALLEN PEPPER, JR.

UNITED STATES DISTRICT JUDGE